

CHAPTER NO. 803

SENATE BILL NO. 2419

By McNally, Burks, Fowler, Clabough

Substituted for: House Bill No. 2796

By Curtiss, Todd, Kent, Coleman, Sontany, Garrett, West, Bone, Vincent, Gresham, Dunn, Hensley, Sharp, Hood, Hargrove, Winningham, Shepard, Wood, DuBois, Bittle, Baird, Pleasant, Harry Brooks, Phillip Johnson, Walker, Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, relative to the taxation of unauthorized substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding a new part composed of Sections 2 through 13 of this act.

SECTION 2. The purpose of this act is to levy an excise tax to generate revenue for state and local law enforcement agencies for use by those agencies to investigate, combat, prevent and reduce drug crimes, and for the general fund. Nothing in this act may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

SECTION 3. As used in this act, unless the context clearly requires otherwise:

(1) "Commissioner" means the Commissioner of Revenue;

(2) "Controlled substance" means a controlled substance as defined in Section 39-17-402, and not included in "low-street-value drugs".

(3) "Dealer" means any of the following:

(A) A person who actually or constructively possesses more than forty-two and one-half (42.5) grams of marijuana, seven (7) or more grams of any other unauthorized substance that is sold by weight, or ten (10) or more dosage units of any other unauthorized substance that is not sold by weight.

(B) A person who in violation of Title 57, Chapter 3, Part 2, possesses an illicit alcoholic beverage for sale.

(4) "Illicit alcoholic beverage" means an alcoholic beverage, as defined in Section 57-3-101, not authorized by the Tennessee alcoholic beverage commission. "Illicit alcoholic beverage" includes, but is not limited to, the products known as "bootleg liquor", "moonshine", "non-tax-paid liquor", and "white liquor".

(5) "Local law enforcement agency" means a municipal police department, a metropolitan police department, or a sheriff's office.

(6) "Low-street-value drug" means any of the following controlled substances:

(A) An anabolic steroid as defined in Section 39-17-410(f).

(B) A depressant described in Section 39-17-412(c).

(C) A hallucinogenic substance described in Section 39-17-406(d).

(D) A stimulant described in Section 39-17-412(e).

(E) A controlled substance described in Section 39-17-414.

(7) "Marijuana" means all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(8) "Person" means "person", as defined in Section 39-17-402.

(9) "State law enforcement agency" means any state agency, force, department, or unit responsible for enforcing criminal laws.

(10) "Unauthorized substance" means a controlled substance, a low-street-value drug or an illicit alcoholic beverage.

SECTION 4. (a) An excise tax is levied on unauthorized substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(2) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(3) At the rate of fifty dollars (\$50.00) for each gram, or fraction thereof, of cocaine.

(4) At the rate of two hundred dollars (\$200.00) for each gram, or fraction thereof, of any other controlled substance or low-street-value drug that is sold by weight.

(5) At the rate of fifty dollars (\$50.00) for each ten (10) dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(6) At the rate of two hundred dollars (\$200.00) for each ten (10) dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(b) A quantity of marijuana or other unauthorized substance is measured by the weight of the substance whether pure or impure or dilute, or by the number of dosage units in the dealer's possession when the substance is not sold by weight, in the dealer's possession. A quantity of an unauthorized

substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(c) An excise tax is levied on illicit alcoholic beverages possessed by a dealer at the following rates:

(1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit alcoholic beverages sold by the drink.

(2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit alcoholic beverages not sold by the drink.

SECTION 5. (a) The tax levied in this act does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) The tax levied in this act does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any parts of the marijuana plant;

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks;

(3) Marijuana seeds that have been sterilized and are incapable of germination;

(4) Roots of the marijuana plant.

SECTION 6. (a) The commissioner shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this act. Dealers shall report the taxes payable under this act at the time and on the form prescribed by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the commissioner shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Every local law enforcement agency and every state law enforcement agency must report to the Department of Revenue within forty-eight (48) hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the manner prescribed by the commissioner and must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of any individual in possession of the substance and such individual's social security number, and any other information prescribed by the commissioner. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this act:

(1) More than forty-two and one-half (42.5) grams of marijuana.

(2) Any illicit alcoholic beverage.

(3) Seven (7) or more grams of any other unauthorized substance that is sold by weight.

(4) Ten (10) or more dosage units of any other unauthorized substance that is not sold by weight.

SECTION 7. The tax imposed by this act is payable by any dealer who actually or constructively possesses an unauthorized substance in this state upon which the tax has not been paid, as evidenced by a stamp issued by the commissioner. The tax is payable within forty-eight (48) hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax is payable on the next working day. If the tax is not paid within forty-eight (48) hours, the tax will become delinquent and shall accrue penalty and interest pursuant to the provisions of Title 67, Chapter 1, Part 8. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the tax due on an unauthorized substance has been paid, no additional tax is due under this act even though the unauthorized substance may be handled by other dealers. If a dealer is found in possession of a substance taxable under this part that does not have the appropriate tax stamp affixed, it shall be presumed the dealer has been in possession of such substance for longer than forty-eight (48) hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

SECTION 8. Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this act shall be made as provided in this section. The commissioner shall immediately assess tax, applicable penalty, and interest based on any information brought to the attention of the commissioner, or the commissioner's duly authorized assistants, that a person is liable for unpaid tax pursuant to this part. The tax shall be assessed in the same manner as any other tax assessment, except when the provisions of this act specify otherwise. The commissioner shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice of assessment and demand for payment shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the commissioner shall collect the assessment, including penalty and interest, pursuant to the procedure set forth in Title 67, Chapter 1, Part 14, unless the dealer files with the commissioner sufficient security in the amount of the assessment, including penalty and interest. Unless security is provided, the assessment shall be deemed a jeopardy assessment, and the commissioner shall use all means available to collect the assessment from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Title 67, Chapter 1, Part 18, except to the extent those provisions are modified by this act. The provisions of Section 67-1-1802 are applicable to the tax levied by this act, except that a claim for refund shall be filed within six (6) months of the date of payment of the tax. For purposes of this section, "sufficient security" shall mean one of the forms of security listed in Section 67-1-1801(c)(1)(A) through (C).

SECTION 9. Notwithstanding any other provision of law, information obtained pursuant to this act is confidential and, unless independently obtained, may not be used in a criminal prosecution other than a prosecution for a violation of this act. Stamps issued pursuant to this act may not be used in a criminal prosecution other than a prosecution for a violation of this act. The provisions of Title 67, Chapter 1, Part 17, including the criminal penalties specified therein, shall apply to the tax levied under this

act. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

SECTION 10. (a) The commissioner shall credit the proceeds of the tax levied by this act to a special nonreverting account, to be called the "State Unauthorized Substances Tax Account", until the tax proceeds are unencumbered. The commissioner shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis.

(b) Tax proceeds are unencumbered when:

(1) the tax has been paid and the collection process completed;
and

(2)(A) the taxpayer has no current right to file a refund claim, and the paid tax is not the subject of any pending lawsuit for the recovery of that tax; or

(B) the time for the taxpayer to file suit pursuant to Section 67-1-1802(c) has expired.

(C) The commissioner shall first apply the unencumbered tax proceeds to the costs of storing and disposing of the assets seized in payment of the assessment under this act, which costs shall be added to and become part of the assessment. From the remaining proceeds, the commissioner shall remit seventy-five percent (75%) of the unencumbered tax proceeds that were collected by assessment to the state or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. Such proceeds are to be used by the agency solely for the purpose of investigating, combating, preventing, and reducing drug crimes. If more than one (1) state or local law enforcement agency conducted the investigation, the commissioner shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The commissioner's determination of the equitable share for each agency shall be final, and shall not be subject to review in an administrative or judicial proceeding. The commissioner shall credit the remaining unencumbered tax proceeds to the general fund.

SECTION 11. The provisions of this act shall not be construed to confer any immunity from criminal prosecution or conviction for a violation of Title 39, Chapter 17, Part 4, upon any person who voluntarily pays the tax imposed by this part or who otherwise complies with the provisions of this part.


SECTION 12. The commissioner shall have the authority to promulgate rules in accordance with Title 4, Chapter 5, to implement, administer and enforce the provisions of this act.

SECTION 13. This act shall take effect January 1, 2005, the public welfare requiring it.

PASSED: May 20, 2004



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 3rd day of June 2004



PHIL BREDEBEN, GOVERNOR